IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

IN RE:	§	
	§	
JOHN C. ROGERS AND	§	CASE NO. 01-43459-DML-13
TERESA ROGERS	§	
DEBTORS	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Debtor's objection to claim number 4 (the "Claim") filed by Citifinancial Mortgage Co., Inc. ("Lender"). The Court considered the Claim at a hearing on May 9, 2002. Though Lender had filed a response to the objection, it did not appear at the hearing. Debtors appeared through counsel and made a record consisting of the Claim (to which Lender's note and deed of trust were appended), the objection and response, and counsel's statements of her efforts to contact counsel for the lender in advance of the hearing[1]

The Court has core jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(B). This memorandum constitutes the Court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052, 9014 and 3007.

[1] Though counsel did not testify under oath from the witness stand, the Court accepts as fact matters within her personal knowledge. As an officer of the Court, her credibility is ensured, and the oath in any event is typically waived in this District for attorney-witnesses.

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I. Background

Debtors filed for relief under Chapter 13 of the Bankruptcy Code on May 10, 2001. At the time of filing Debtors were two payments in arrears to Lender. The total amount of arrearages was $2,248.64.

On October 16, 2001, Lender filed the Claim. In the Claim Lender sought recovery of the two missed payments plus $25,000.00 in attorneys' fees.

Debtors objected to the Claim, citing the $25,000 in fees as unsupported, unwarranted and unreasonable, on February 21, 2002.[2] Lender responded to the objection in general terms. Thereafter Debtors' counsel made several attempts to reach Lender's counsel without success. As a result, Debtors' counsel had no choice but to appear and try the objection to the Court – though Lender neither appeared nor contacted Debtors' counsel or the Court respecting this matter.

II. Discussion

Paragraph 35 of Lender's deed of trust entitles it to repayment of costs and fees incurred in enforcing its rights. However, even if there were no limits of reasonableness on the Lender's entitlement, a charge of $25,000 would be unconscionable under the circumstances of this case.

[2] Debtors did not object to the amount of arrearages sought in the Claim.

Moreover, Lender has failed to document the fees it seeks or to show that the fees were actually incurred as an obligation of Lender paid by Lender. A proof of claim is prima facie evidence of its own validity. *See* FED. R. BANKR. P. 3001(f); 9 COLLIER ON BANKRUPTCY ¶ 3001.09[1] (15th ed. rev. 2001). However, once the claim has been credibly controverted, the burden of proof of its allowability falls on the party who would be required to make that proof in any other context. *See Raleigh v. Illinois Dep't of Revenue,* 530 U.S. 15, 120 S.Ct. 1951, 147 L. Ed.2d 13 (2000); *In re Placid Oil Co* , 988 F.2d 554, 557 (5th Cir. 1993).

Here Debtors controverted the Claim in their objection. Lender has demonstrated no entitlement to $25,000 in fees and costs. Lenders have the burden of doing so. *See Raleigh v. Illinois Dep't of Revenue,* 530 U.S. 15. The evidence before the Court overwhelmingly suggests gross overreaching on the part of the Lender. The Claim, to the extent of the $25,000, is clearly unreasonable and unconscionable and must be disallowed.

Furthermore, Lender, by filing a frivolous response and failing to respond to Debtors' counsel, forced Debtors' counsel to prepare for and attend a hearing on the objection. This not only created a potential obligation of the estate to Debtors' counsel (11 U.S.C. § 330(a)(4)(B)), but also required the Court to use time that might have been more usefully devoted to other matters. The Court accordingly finds Lender's response to the objection to have been interposed solely to harass, increase costs to and delay Debtors. FED. R. BANKR. P. 9011(b). The Court therefore will sanction Lender in an amount equal to one of the two payments of Debtors' arrears, unless Lender, within 21 days, shows cause why such sanction should not be imposed. FED. R. BANKR. P. 9011(c)(1)(B).

The amount of such sanction shall be paid to Debtors' counsel to satisfy fees incurred in connection with this matter. The sanction shall be imposed through a 50% reduction in amounts paid by Debtors pursuant to Chapter 13 to cure their arrears to Lender.

Subject to any further proceedings pursuant to FED. R. BANKR. P. 9011(c)(1)(B), entry of this Memorandum Opinion and Order shall be with prejudice to any affirmative claim Debtors may assert against Lender by reason of its efforts to collect $25,000 through the Claim. It is, accordingly

ORDERED that Claim number 4 be disallowed to the extent of $25,000 and allowed to the extent of $2,248.64; provided it is further

ORDERED that, subject to the foregoing discussion, one half of each payment made by Debtors on such allowed portion of the Claim shall be paid to the Ebert Law Offices; and it is further

ORDERED that, unless further proceedings occur in this matter pursuant to FED. R. BANKR. P. 9011(c)(1)(B), entry of this Order shall be with prejudice to any other action, which Debtors might bring against Lender by reason of its assertion of the disallowed portion of the Claim.

Signed this the 13th day of May, 2002.

DENNIS MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE